

**§ 301.6722-1 Failure to furnish correct payee statements.**

(a) *Imposition of penalty*—(1) *General rule.* A penalty of \$50 is imposed for each payee statement (as defined in section 6724(d)(2)) with respect to which a failure (as defined in section 6722(a) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a) with respect to a single payee statement even though there may be more than one failure with respect to such statement. However, the penalty shall apply to failures on composite substitute payee statements as though each type of payment and other required information were furnished on separate statements. A “composite substitute payee statement” is a single document created by a filer to reflect several types of payments made to the same payee. The total amount imposed on any person for all failures during any calendar year with respect to all payee statements shall not exceed \$100,000. See section 6722(c) and paragraph (c) of this section for higher penalties when a failure is due to intentional disregard of the requirement to furnish timely correct payee statements. See paragraph (a)(1) of § 301.6724-1 for a waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6722(a) and paragraph (a)(1) of this section apply are—

(i) A failure to furnish a payee statement on or before the prescribed date therefore to the person to whom such statement is required to be furnished (“failure to furnish timely”), and

(ii) A failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information (“failure to include correct information”). A failure to furnish timely includes a failure to furnish a written statement to the payee in a statement mailing as required under sections 6042(c), 6044(e), 6049(c), and 6050N(b), as well as a failure to furnish the statement on a form acceptable to the Internal Revenue Service. Except as provided in paragraph (b) of this section, a failure to include correct information encompasses a failure to include the information re-

quired by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms).

(b) *Exception for inconsequential errors or omissions*—(1) *In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (b), the term “inconsequential error or omission” means any failure that cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her return or from otherwise putting the statement to its intended use.

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential:

- (i) A dollar amount,
- (ii) The significant items in the address of a payee, which is the address provided by the payee to the filer,
- (iii) The appropriate form for the information provided (*i.e.*, whether or not the form is an acceptable substitute for an official form of the Internal Revenue Service), and
- (iv) The manner of furnishing a statement required under sections 6042(c), 6044(e), 6049(e), and 6050N(b). The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples which do not take into account any possible application of the penalty for intentional disregard under paragraph (c) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724-1:

*Example 1.* A payor furnishes a statement with respect to a Form 1099-MISC (relating to miscellaneous income). The payee statement is complete and correct, except the word “boulevard” is misspelled in the payee’s address. The error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

*Example 2.* Assume the same facts in *Example 1*, except that the only error on the payee statement is that the payee's street address, 4821 Grant Boulevard, is reported incorrectly as 8421 Grant Boulevard. A penalty is imposed under paragraph (a) of this section with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use.

(c) *Higher penalty for intentional disregard of requirement to furnish timely correct payee statements*—(1) *Application of section 6722(c).* If a failure is due to intentional disregard of the requirement to furnish timely correct payee statements, the amount of the penalty shall be determined under paragraph (c)(2) of this section. Whether a failure is due to intentional disregard of the requirement to furnish timely correct payee statements is based upon the facts and circumstances surrounding the failure. The facts and circumstances considered include those under § 301.6721-1(f)(3), which shall apply in determining whether a failure under this section is due to intentional disregard.

(2) *Amount of the penalty.* If one or more failures under paragraph (a) of this section are due to intentional disregard of the requirement to furnish timely payee statements or of the requirement to include correct information, then, with respect to each such failure determined under this paragraph (c)(2)—

(i) The \$100,000 limitation under paragraph (a) of this section shall not apply and the penalty under this paragraph (c)(2) shall not be taken into account in applying the \$100,000 limitation to penalties not determined under this paragraph (c)(2);

(ii) The penalty imposed under paragraph (a) of this section shall be \$100 or, if greater, the statutory percentage; and

(iii) The term “statutory percentage” means—

(A) In the case of a payee statement other than a statement required under section 6045(b), 6041A(e) (in respect of a return required under section 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6060L(c), 10 percent of the aggregate dollar

amount of the items required to be reported correctly, or

(B) In the case of a payee statement required under section 6045(b), 6050K(b), or 6050L(c), 5 percent of the aggregate dollar amount of the items required to be reported correctly.

(3) *Computation of the penalty; aggregate dollar amount of items required to be shown correctly.* The aggregate dollar amount used in computing the penalty under this paragraph (c) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining such amount the same item shall be counted only once. For example, if a filer willfully fails to furnish a Form 1099-INT on which \$800 of interest and \$160 of Federal income tax withheld (*i.e.*, backup withholding) is required to be shown, only the \$800 amount is taken into account in computing the penalty.

(d) *Definitions*—(1) *Payee.* See § 301.6721-1(g)(5) for the definition of “payee.”

(2) *Payee statement.* The term *payee statement* means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K-1 (Form 1065), “Partner's Share of Income, Deductions, Credits, etc.,” for section 6031(b) or (c), a copy of the Schedule K-1 (Form 1041), “Beneficiary's Share of Income, Deductions, Credits, etc.,” for section 6034A, and a copy of Schedule K-1 (Form 1120S), “Shareholder's Share of Income, Deductions, Credits, etc.,” for section 6037(b));

(ii) Section 6039(b) (relating to information required in connection with certain options);

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099-MISC, “Miscellaneous Income”; Form W-2, “Wage and Tax Statement”; Form 1099-INT,

“Interest Income”; and the winner’s copies of Form W-2G, “Certain Gambling Winnings”);

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099-MISC);

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099-DIV, “Dividends and Distributions”);

(vi) Section 6043A(b) or (d) (relating to returns relating to taxable mergers and acquisitions);

(vii) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099-PATR, “Taxable Distributions Received From Cooperatives”);

(viii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099-B, “Proceeds From Broker and Barter Exchange Transactions,” for broker transactions; the transferor copy of Form 1099-S, “Proceeds From Real Estate Transactions,” for reporting proceeds from real estate transactions; and the recipient copy of Form 1099-MISC for certain substitute payments and payments to attorneys);

(ix) Section 6045A (relating to information required in connection with transfers of covered securities to brokers);

(x) Section 6045B(c) or (e) (relating to returns relating to actions affecting basis of specified securities);

(xi) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099-INT or Form 1099-OID, “Original Issue Discount”);

(xii) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099-MISC);

(xiii) Section 6050H(d) or (h)(2) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098, “Mortgage Interest Statement”);

(xiv) Section 6050I(e), (g)(4), or (g)(5) (relating to returns relating to cash received in trade or business, etc., gen-

erally a copy of Form 8300, “Report of Cash Payments Over \$10,000 Received In a Trade or Business”);

(xv) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099-A, “Acquisition or Abandonment of Secured Property”);

(xvi) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308, “Report of a Sale or Exchange of Certain Partnership Interests”);

(xvii) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282, “Donee Information Return”);

(xviii) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099-MISC);

(xix) Section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally the recipient copy of Form 1099-C, “Cancellation of Debt”);

(xx) Section 6050Q(b) (relating to certain long-term care benefits, generally the policyholder and insured copies of Form 1099-LTC, “Long-Term Care and Accelerated Death Benefits”);

(xxi) Section 6050R(c) (relating to returns relating to certain purchases of fish, generally the recipient copy of Form 1099-MISC);

(xxii) Section 6051 (relating to receipts for employees, generally the employee copy of Form W-2);

(xxiii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W-2);

(xxiv) Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W-2);

(xxv) Section 6048(b)(1)(B) (relating to foreign trust reporting requirements, generally copies of the owner and beneficiary statements of Form 3520-A, “Annual Information Return of Foreign Trust With a U.S. Owner”);

(xxvi) Section 408(i) (relating to reports with respect to individual retirement plans on the recipient copies of

Form 1099-R, “Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.”);

(xxvii) Section 6047(d) (relating to reports by plan administrators on the recipient copies of Form 1099-R);

(xxviii) Section 6050S(d) (relating to returns relating to qualified tuition and related expenses, generally the borrower copy of Form 1098-E, “Student Loan Interest Statement,” or the student copy of Form 1098-T, “Tuition Statement”);

(xxix) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxx) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally the recipient copy of Form 1099-H, “Health Coverage Tax Credit (HCTC) Advance Payments”);

(xxxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally the recipient copy of Form 1099-R); or

(xxxii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

(3) *Other items.* The term *payee statement* also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States) (generally the recipient copy of Form 1042-S, “Foreign Person’s U.S. Source Income subject to Withholding,” or Form 8805, “Foreign Partner’s Information Statement of Section 1446 Withholding Tax.”)

(e) *Effective/Applicability date.* The reference in paragraph (d)(3) of this section to Form 8805 shall apply to partnership taxable years beginning after April 29, 2008.

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**§ 301.6723-1 Failure to comply with other information reporting requirements.**

(a) *Imposition of penalty—(1) General rule.* A penalty of \$50 is imposed for each failure to comply timely with a specified information reporting requirement (as defined in paragraph (a)(4) of this section) or for each failure to include correct specified information. Multiple penalties are imposed with respect to a document with failures to comply with more than one of the requirements set forth in paragraph (a)(4) of this section or multiple instances of failures to comply with any one of these requirements. Nonetheless, if a failure that occurs with respect to any requirement defined in paragraph (a)(4) of this section would be subject to a penalty under both paragraph (a)(2)(i) and paragraph (a)(2)(ii) of this section, no more than one penalty is imposed for such failure. The total amount imposed on any person for all failures during any calendar year with respect to all specified information reporting requirements shall not exceed \$100,000. See paragraph (a) of § 301.6724-1 for the waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which paragraph (a)(1) of this section apply are—

(i) A failure to comply timely with a specified information reporting requirement on or before the date prescribed therefor (“failure to comply timely”), and

(ii) A failure to include all the information required by a specified information reporting requirement or the inclusion of incorrect information (“failure to include correct information”).

(3) *Exception for inconsequential errors or omissions.* An inconsequential error or omission is not considered a failure to comply with a specified information reporting requirement. For purposes of paragraph (a)(3) of this section, an error or omission is considered inconsequential if it does not frustrate the purpose or use for which the information is intended.

(4) *Specified information reporting requirement defined.* For purposes of section 6723 and this section, a “specified